

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 518

AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 14-8-2-289 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 289. "Unit of local government",

(~~†~~) for purposes of IC 14-12-1 ~~has the meaning set forth in IC 14-12-1-3~~; and

(~~2~~) for purposes of IC 14-22-10, means a:

(~~A~~) (1) county;

(~~B~~) (2) city;

(~~C~~) (3) town; or

(~~D~~) (4) township;

located in Indiana.

SECTION 2. IC 32-30-6-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1.5. As used in this chapter, "forestry operation" includes facilities, activities, and equipment used to plant, raise, manage, harvest, and remove trees on private land. The term includes site preparation, fertilization, pest control, and wildlife management.**

SECTION 3. IC 32-30-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. As used in this chapter, "locality" **means the following:**

(1) For purposes of section 9 of this chapter, ~~means~~ the specific

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area of land upon which an:

(A) agricultural operation; or

(B) industrial operation;

is conducted. ~~and~~

(2) For purposes of section 10 of this chapter, ~~means~~ the following:

(A) The specific area of land upon which a public use airport operation is conducted.

(B) The airport imaginary surfaces as described in IC 8-21-10-8.

(3) For purposes of section 11 of this chapter, the specific area of land upon which a forestry operation is conducted.

SECTION 4. IC 32-30-6-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) An action to abate or enjoin a nuisance may be brought by any person whose:

(1) property is injuriously affected; or

(2) personal enjoyment is lessened;

by the nuisance.

(b) A civil action to abate or enjoin a nuisance may also be brought by:

(1) an attorney representing the county in which a nuisance exists; or

(2) the attorney of any city or town in which a nuisance exists.

(c) A county, city, or town that brings a successful action under this section (or IC 34-1-52-2 or IC 34-19-1-2 before their repeal) to abate or enjoin a nuisance caused by the unlawful dumping of solid waste is entitled to recover reasonable attorney's fees incurred in bringing the action.

(d) A forestry operation that successfully defends an action under this section is entitled to reasonable costs and attorney's fees incurred in defending the action.

SECTION 5. IC 32-30-6-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) **This section does not apply if a nuisance results from the negligent operation of a forestry operation.**

(b) For purposes of subsection (d), a forestry operation is considered to be in continuous operation if the locality supports an actual or a developing timber crop.

(c) A forestry operation that:

(1) existed before a change in the land use or occupancy of

land within one (1) mile of the boundaries of the locality; and

(2) would not have been a nuisance before the change in land

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use or occupancy;
is not a private or public nuisance.

(d) A forestry operation that conforms to generally accepted forestry management practices and that has been in continuous operation is not a private or public nuisance as a result of any of the following:

- (1) A change in the ownership or size of the forestry operation.
- (2) Enrollment in a government forestry conservation program.
- (3) Use of new forestry technology.
- (4) A visual change due to removal of timber or vegetation.
- (5) Normal noise from forestry equipment.
- (6) Removal of timber or vegetation from a forest adjoining the locality.
- (7) The proper application of pesticides and fertilizers.

SECTION 6. IC 36-7-2-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) An ordinance adopted after March 31, 2005, by a unit of local government that:

- (1) makes a forestry operation (as defined in IC 32-30-6-1.5) a nuisance; or
- (2) provides for an abatement of a forestry operation as a:
 - (A) nuisance;
 - (B) trespass; or
 - (C) zoning violation;

under this chapter is void.

(b) If the owner of a property owned the property before the enactment of an ordinance that restricts forestry operations but that is not invalidated by subsection (a), the property is exempt from the ordinance if the forestry operations (as defined by IC 32-30-6-1.5) on the property:

- (1) comply with generally accepted best management practices;
- (2) comply with the practices established in the Indiana Logging and Forestry Best Management Practices BMP Field Guide, as published in September 1999, by the division of forestry of the department of natural resources; and
- (3) have been in continuous operation on the property.

SECTION 7. IC 36-7-4-201 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 201. (a) For purposes of IC 36-1-3-6, a unit wanting to exercise planning and zoning powers

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in Indiana must do so in the manner provided by this chapter.

(b) The purpose of this chapter is to encourage units to improve the health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end:

- (1) that highway systems be carefully planned;
- (2) that new communities grow only with adequate public way, utility, health, educational, and recreational facilities;
- (3) that the needs of agriculture, **forestry**, industry, and business be recognized in future growth;
- (4) that residential areas provide healthful surroundings for family life; and
- (5) that the growth of the community is commensurate with and promotive of the efficient and economical use of public funds.

(c) Furthermore, municipalities and counties may cooperatively establish single and unified planning and zoning entities to carry out the purpose of this chapter on a countywide basis.

(d) METRO. Expanding urbanization in each county having a consolidated city has created problems that have made the unification of planning and zoning functions a necessity to insure the health, safety, morals, economic development, and general welfare of the county. To accomplish this unification, a single planning and zoning authority is established for the county.

SECTION 8. IC 14-12-1-3 IS REPEALED [EFFECTIVE JULY 1, 2005].

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Approved: _____

Governor of the State of Indiana

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